

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

ROBERTO ALVAREZ SANCHEZ, ) CASE NO. 4:11CV3171  
Petitioner, )  
v. ) MEMORANDUM  
UNITED STATES OF AMERICA, ) AND ORDER  
Respondent. )

This matter is before the court on its own motion. On December 7, 2011, the court conducted an initial review of Roberto Alvarez Sanchez's ("Sanchez") Petition for Writ of Habeas Corpus ("Petition"). (Filing No. [5](#).) The court noted that Sanchez's Petition challenged the legality of his conviction and sentence and needed to be brought in a 28 U.S.C. § 2255 motion, not a 28 U.S.C. § 2241 petition. The court gave Sanchez until January 9, 2012, to inform the court whether he wished to treat his Petition as a motion brought pursuant to 28 U.S.C. § 2255. ([Id.](#) at CM/ECF p. 3.) The court also ordered Petitioner to inform the court whether he wished to amend his Petition to contain any additional § 2255 claims. ([Id.](#))

On January 3, 2012, Petitioner requested that the court recharacterize his Petition as a motion filed pursuant to 28 U.S.C. § 2255. (Filing No. [6](#).) Petitioner also stated that “he has already stipulated all the points he wished to raise in his previously filed motion.” ([Id.](#) at CM/ECF p. 1.) Accordingly,

**IT IS THEREFORE ORDERED that:**

1. The Petition for Writ of Habeas Corpus (Filing No. [1](#)) is recharacterized as a motion filed pursuant to 28 U.S.C. § 2255;

2. The Clerk of the court is directed to file the Petition (Filing No. [1](#)) as a motion brought pursuant to 28 U.S.C. § 2255 in [Case No. 4:09CR3085](#), assigned to Judge Richard G. Kopf; and
3. This matter is dismissed without prejudice. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 3<sup>rd</sup> day of February, 2012.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge

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